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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 957 OF 1991

1. Chandrakant Raghunath Parab)
residing at Alhad Cooperative Housing)
Society, Block No. 30, 5th Floor, Agashe)
Peth, Behind Portuguese Church, Dadar)
Bombay – 400 028)
2. Kunjavihari Krishnaji Parab,)
C/o. National Insurance Co., Regional)
Office, 12, J. T. Road, Churchgate,)
Bombay 400 020.)
3. Prabhakar Krishnaji Parab,)
residing at Chinchoti, Taluka Vasai,)
District – Thane) ...Petitioners

Vs.

1. State of Maharashtra)
2. Divisional Commissioner,)
Konkan Division, Old Secretariat, Annexe)
Fort, Bombay 400 032)
3. Halya Ratnya Tala)
(Since deceased, represented through LRs.)
3-A. Anusaya Halya Tala, Age 50 years,)
3-B. Sukrya Halya Tala, Age 45 years,)
3C. Devya Halya Tala, Age 43 years)

3D. Mrs. Venu Halya Tala, Age 40 years,)
All residing at Chinchoti, Taluka Vasai,)
District Thane) ...Respondents

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Mr. G. J. Sabnis, for the Petitioners

Mr. R. M. Patne, AGP for the Respondent Nos. 1 & 2.

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CORAM: V. M. KANADE J.

DATE : JANUARY 13, 2011

ORAL ORDER

1. Heard the learned counsel appearing on behalf of the petitioners and the learned AGP appearing on behalf of respondent Nos. 1 and 2. None appears on behalf of respondent No. 3A to 3D though they are served. The petitioners are aggrieved by the judgment and order passed by the Additional Commissioner, Konkan Division, Mumbai, who by his order 3rd September, 1990 was pleased to set aside the order passed by the Tahsildar dated 29th April, 1981 and further gave a direction that an area of 2 Acres out of Survey No. 77 be restored to the respondents herein.

2. Brief facts are as under-

. The petitioners are, admittedly, landlord of the entire of land

admeasure 4H, 27½ Guntha, situated at village Chinchoti, out of Survey No. 77. Respondent No. 3 herein was a tenant in respect of the land admeasuring 2 Acres 5½ Guntha. The proceedings under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Act") was initiated and order was passed in favour of respondent No.3, permitting him to purchase the land, admeasuring 2 Acres 5½ Gunthas out of Survey No. 77. Pursuant to the said order, respondent No.3 paid the purchase price and the certificate under Section 32-M of the Act was issued in his favour. This order was challenged by the petitioners before the Maharashtra Revenue Tribunal who by their order dated 17th September, 1970 was pleased to set aside the order passed by the Tahsildar & ALT and remanded the matter back to the Tahsildar. After the remand, the Tahsildar confirmed the order which was passed earlier in respect of area 2 Acres and 5½ Gunthas and the proceedings in respect of the balance portion of the land; namely 4 Acres and 34 Gunthas was dropped. After a period of almost 9 years, the Additional Commissioner, Konkan Division *suo-moto* initiated and revived the said proceedings and by its order dated 3rd September, 1990 set aside the order of the Tahsildar and directed that the area of 2 Acres be handed over to the respondent No.3 herein.

3. The learned counsel appearing on behalf of the petitioners submitted that, firstly, the impugned order was passed on 3-9-1990 after the lapse of 9 years, though section 7 of the said Act clearly provides that the Commissioner could revive the proceedings within a period of three years. He, therefore, submitted that said order was liable to be quashed and set aside on this ground alone. Secondly, it is submitted that the land in question did not belong to respondent No.3 and the impugned order has been passed under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. He submitted that the land did not belong to tribal since it belong to the petitioners who were the landlord and therefore, this order should not have been passed; and lastly, he submitted that since the order was passed by the Maharashtra Revenue Tribunal, there is no question of again reviving the said proceedings *sou-motu* by the Additional Commissioner.

4. In my view, there is much substance in the submissions made by the learned counsel for the petitioners. It is an admitted position that – as far as 32-G proceedings are concerned, the order passed by the Agricultural Lands Tribunal (for short ALT) was only to the extent of 2 Acres and 5½ Guntha land and after remand this order was confirmed by the Tahsildar by his order dated 29-4-1981. Respondent No.3 had

executed the said order and had paid the purchase price accordingly. However, after the lapse of 9 years, the Additional Commissioner had passed the impugned order. Section 7 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 reads as under-

> "7. Where no appeal has been filed within the period provided by sub-section (2) of section, the Commissioner may *suo-motu* on the direction of the State Government at any time-
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> (a) call for record of any inquiry proceeding of any Collector for the purpose of satisfying himself as to the levy of propriety of any order passed by and as to the regularity of the proceeding of, such Collector, as the case may be, and
>
> (b) pass such order thereon as he thinks fit :
>
> Provided that no such record shall be called for after the expiry of three years from the date of such order except in case where directions are issued by the State Government; and no order of the Collector shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard."

5. Section 7 of the aforementioned Act clearly envisages that *suo-motu* proceedings can be initiated at the most within three years from he date of order, unless directions are issued by the State Government. Admittedly, in the present case, no such directions have

been issued by the State Government, and therefore, the Commissioner did not have power to initiate the *suo-motu* proceedings since the period of three years had expired. On this ground, the said order will have to be quashed and set aside. The order passed by the Tahsildar Vasai dated 29th April, 1981 is restored and the proceedings initiated under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 are dropped. Writ petition is accordingly allowed in terms of prayer clause (b).

[V. M. KANADE J.]